


Department of Planning and Zoning

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Mary O'Neil, AICP, Senior Planner
Nic Anderson, Zoning Clerk
Elsie Tillotson, Department Secretary



TO: Development Review Board
FROM: Scott Gustin 
DATE: May 6, 2014
RE: 14-0814VR; 15 Conger Avenue

Note: These are staff comments only; decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

Zone: WRL Ward: 5

Owner/Representative: David Maynard / Gehn Fujii

Request: Variance from limitation of development of existing small lot of less than 4,000 sf and from rear yard setback of 20ft.

Applicable Regulations:
Article 12 (Appeals and Variances)

Background Information:

The applicant is seeking a two-fold variance approval. No development is included in this application. The variance is sought as a precursor to a potential single family home with accessory apartment to be filed under separate permit if the variance is granted.

Relief is sought from the buildable small lot provisions of Sec. 5.2.1, *Existing Small Lots* that requires at least 4,000 sf to build on a small lot (i.e. less than the 6,000 sf minimum lot size) existing as of April 26, 1973. This property appears to date to September 29, 1972 and is just 2,800 sf in area. It contains only a 4-bay, single story garage structure.

Relief is also sought from the rear yard setback required by Table 4.4.5-3: *Residential District Dimensional Standards* which requires a rear yard setback of 25% of the lot depth but in no event less than 20'. The lot is 50' deep and, therefore, requires a 20' rear yard setback. The applicant is seeking approval of a 5' rear yard setback – one that applies to accessory structures of 15' in height or less.

The garage on the property amounts to a nonconforming use. Garages as a primary use are not permitted in the WRL zone, wherein the subject property is located. The variance would enable a conversion to a conforming residential use. As noted in these findings, part of the requested variance is warranted and could enable the construction of a modestly scaled single family home. There may not be sufficient room; however, to accommodate an accessory apartment, particularly as related to the area needed for additional parking. In any event, development of the property would be pursued under separate permit application subject to review by the Development Review Board.

Previous zoning actions for this property are as follows:

- 3/18/14, Adverse determination of existing buildable small lot

Recommendation: Variance approval re: Sec. 5.2.1, Existing Small Lots as per, and subject to, the following findings and conditions:

I. Findings

Article 12: Variances and Appeals

Sec. 12.1.1 Variances

(a) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the zoning regulation in the neighborhood or district in which the property is located.

The subject property is small at just 2,800 sf (56' wide by 50' deep). It is well under the minimum lot size of 6,000 sf that applies in the WRL zone. The lot was created in 1972 and pre-dates the minimum lot size presently in effect. It is also smaller than the minimum 4,000 sf lot size specified in Sec. 5.2.1 that is intended to enable development of pre-existing lots that are less than the district minimum lot size. While the property is less than 4,000 sf, there are three other properties within the same block that are also less than 4,000 sf. They are 45 Lakeside Avenue (3,400 sf with a duplex), 10 Central Avenue (3,900 sf with a duplex), and 70 Wright Avenue (2,250 sf with a single family home). The applicant has noted other < 4,000 sf properties within the overall Lakeside neighborhood as well. As with these other properties, the subject property, while small, is sufficiently large to contain a small residence. **(Affirmative finding)**

The applicable 20' rear yard setback is a substantial portion of the 50' lot depth; however, it does not warrant a variance. The average front yard setback of neighboring properties appears to be 13.5'. The required front yard setback is +/- 5' of this average. A new home on the subject property could be located as close as 8.5' to the front property line. This placement would yield a building depth of 21.5'. There remains room as noted in (b) below for a driveway of sufficient dimension for two vehicles. A garage would be possible but subject to restraints. A street-facing garage, if constructed, must be setback at least 25' from the front property line. With the 8.5' setback for the house, the garage could be attached near the rear of the home, or it could be detached. With a 25' setback and 20' depth, there remains room for a 5' rear yard setback. This 5' rear yard setback would be acceptable for a garage of 15' or less in height. No variance of the rear yard setback is needed in order to build on this property. **(Adverse finding)**

(b) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation and that the authorization of a variance is, therefore, necessary to enable the reasonable use of property.

As the lot is only 2,800 sf, it plainly fails to conform to the 4,000 sf minimum lot size stipulated in Sec. 5.2.1. Development is impossible without a variance from this requirement. **(Affirmative finding)**

As noted above, compliance with the 20' minimum rear yard setback is possible. The resultant home would be modest in scale, likely similar to the one at 70 Wright Avenue. The compliant building depth would be 21.'5. With side yard setbacks of 5.5' taken into account, the compliant building width would be 45'. This width is sufficient to allow a ~20' 2-car garage to contain the required parking at less than 50' of the overall façade width. Alternatively, a narrower home could be constructed with no garage and a wider or longer driveway to contain the required parking. **(Adverse finding)**

(c) The unnecessary hardship has not been created by the applicant.

The hardship relative to Sec. 5.2.1 is related to the pre-existing small lot size. It is not a lot newly created by the applicant. **(Affirmative finding)**

While observing the 20' rear yard setback may be inconvenient, it is not a hardship warranting a variance. **(Adverse finding)**

(d) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare.

The variance from the limitations of Sec. 5.2.1 would not alter the essential character of the neighborhood or district in which the subject property is located. As noted previously, there are three other properties of less than 4,000 sf within the same block that contain residences and more within the greater neighborhood. **(Affirmative finding)**

The variance from the 20' rear yard setback is unnecessary as noted before. In addition, the requested 5' rear yard setback would be inconsistent with the existing neighborhood pattern. Within the block and throughout much of the Lakeside neighborhood, the rear yards are the largest relative to side or front yards. **(Adverse finding)**

(e) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the zoning regulation and from the plan.

The requested variance from Sec. 5.2.1 is not a matter of degree. It is a requested exception to the minimum 4,000 sf lot size. As noted above, the 2,800 sf lot size is sufficient to contain a residence consistent with the character of the surrounding built environment. **(Affirmative finding)**

The requested variance from the minimum 20' rear yard setback is unwarranted. The requested 5' rear yard setback represents a substantial deviation from the 20' standard. **(Adverse finding)**

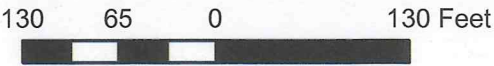
(f) The variance, if granted, will not result in the extension of a non-complying situation or allow the initiation of a nonconforming use of land.

Neither requested variance would result in the extension of a noncomplying situation or allow the initiation of a nonconforming use of land. The requested variances are sought in order to enable replacement of the existing nonconforming garage with a permitted residential use. **(Affirmative finding)**

II. Conditions of Approval

1. This variance approval is for relief from the 4,000 sf minimum lot size of Sec. 5.2.1, *Existing Small Lots*. No variance is granted for the 20' minimum rear yard setback.
2. No development is included in this approval. All development is subject to a separate zoning permit.
3. Per Sec. 12.1.3, *Filing a Request, Public Hearing, and DRB Decision*, this variance approval shall be valid for a period of 2 years.

Lakeside Neighborhood



Gehn Lyon Fujii

139 Burton Rd. Weston, VT 05161 | gehn.fujii@gmail.com | +1 802.779.2710

City of Burlington
Department of Planning & Zoning
149 Church St.
Burlington, VT 05401

Addressee: Nic Anderson

Subject: Request for Variance of

- 1) Development of existing small lot less than 4,000 square feet, CDO Article 5, Section 5.2.1; and
- 2) Rear Setback Standard, CDO Article 4, Section 4.4.5

Property: 15-19 Conger Avenue

Dear Mr. Anderson,

I am currently under contract to purchase 15-19 Conger Avenue, a very small residential lot in the South End. The lot is approximately 56 feet wide by 50 feet deep (2,800 square feet in area), as described by the deed, and has an existing 4-bay garage, which does not conform to the current setback standards. Evidence gathered so far indicates the rear wall of the garage lies directly on or very near to the rear (westerly) property line. Additionally, the right and left walls are within approximately 3 feet of the north and south property lines, respectively.

The neighborhood is comprised predominantly of multi-family dwellings, with this garage more or less at their center. While not a blight, the garage, especially in its deteriorated condition, in no way contributes the character or aesthetics of the neighborhood. My hope is to tear down the existing garage and build an architecturally designed home that the neighborhood will welcome in replacement of the dilapidated garage. However, doing so is not possible in compliance with the small lot development criteria described in the Comprehensive Development Ordinance (CDO) Article 5, Section 5.2.1, and the rear setback standard of 20 feet stated in CDO Article 4, Section 4.4.5.

I respectfully request variance of these two criteria per CDO Article 12, Section 12.1.1 as follows.

Development of existing small lot less than 4,000 square feet, CDO Article 5, Section 5.2.1

The proposed variance would authorize the development of this small 2,800 square feet in area, as justified by the corresponding remarks below to the criteria lettered "a" through "f" in Section 12.1.1:

- a) The unique physical circumstance of the lot creating the hardship is its size (please refer to the attached schematics). Of course, the lot dimensions are not the result of provisions in zoning regulation, but a result of the circumstances under which the lot was created.
- b) Compliance with Article 5, Section 5.2.1 would not allow that a lot this size to be developed.
- c) As applicant and prospective purchaser, I have not created the hardship resulting from the lot's size.
- d) The variance, if authorized, would have no detrimental effect on the character of the neighborhood, the use or development of adjacent property, access to renewable energy sources, or public welfare. In fact, I believe it would have the opposite effect by allowing an under-utilized and dilapidated property to be transformed into a true residential property that contributes to the character neighborhood, and that is consistent in use.
- e) The variance, if authorized, would be the minimum to afford relief allowing for the property to be developed into a single-family home with accessory apartment.
- f) The variance, if authorized, would not extend any situation of non-compliance, or initiate noncompliant use of land.

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Gehn Lyon Fujii

139 Burton Rd. Weston, VT 05161 | gehn.fujii@gmail.com | +1 802.779.2710

Rear Setback Standard, CDO Article 4, Section 4.4.5

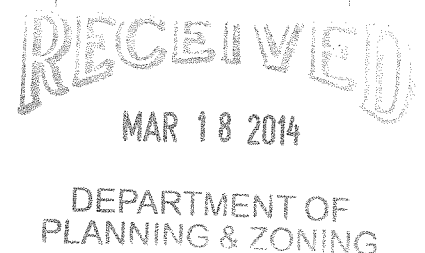
The proposed variance would provide a reduction of the rear setback standard from 20 feet to 5 feet as justified by the corresponding remarks below to the criteria lettered "a" through "f" in Section 12.1.1:

- a) The unique physical circumstance of the lot creating the hardship is its shallowness (please refer to the attached schematics). Of course, the lot dimensions are not the result of provisions in zoning regulation, but a result of the circumstances under which the lot was created.
- b) Conforming to a 20-foot rear setback and providing a front setback of approximately 20 feet to allow for parking results in a buildable footprint that is only 10 feet deep, and 13 feet where there is no adjacent parking. This allowable footprint is too narrow to be practical for building a single-family home.
- c) As applicant and prospective purchaser, I have not created the hardship resulting from the lot's shallowness.
- d) The variance, if authorized, would have no detrimental effect on the character of the neighborhood, the use or development of adjacent property, access to renewable energy sources, or public welfare. The rear of the property is adjacent to the side of another residential lot and is at the very rear where there is open green space. However, should a future accessory structure be built by that neighbor, the proposed 5-foot rear setback would provide for at least the minimum 10 feet between structures as required by Code Enforcement, given the neighbor complies with the minimum 10% of lot width or 5-foot side setback standards as well. Additionally, no request for variance to current front or side setback standards would be necessary.
- e) The variance, if authorized, would be the minimum to afford relief allowing for ample parking and practical buildable footprint for a single-family home with accessory apartment as illustrated in the attached schematics.
- f) The variance, if authorized, would not extend any situation of non-compliance, or initiate noncompliant use of land.

In addition to the schematics referred to above, I have also attached a copy of the deed, satellite imagery of the adjacent neighborhood lots, and historic neighborhood maps to aid in the review process. Thank you for your consideration.

Respectfully,

Gehn Fujii



Scott Gustin

From: Nic Anderson
Sent: Wednesday, April 23, 2014 12:19 PM
To: Scott Gustin
Subject: FW: Lakeside Neighborhood Lots smaller than 4000 sqft.

FYI
Nic

From: Gehn Fujii [mailto:gehn.fujii@gmail.com]
Sent: Wednesday, April 23, 2014 10:54 AM
To: Nic Anderson
Cc: Mike Gannett
Subject: Lakeside Neighborhood Lots smaller than 4000 sqft.

Hello Nic,

I write in regard to the variance application submitted for 15-19 Conger Avenue. The seller's agent, Greg Monteith, has brought to my attention several existing lots in the Lakeside neighborhood that are less than 4000 sqft. These lots are listed below with their corresponding area in case this information might support the application to develop 15-19 Conger Avenue.

- 10 Central Ave. (3968 sqft)
- 32-36 Central Ave. (3999 sqft)
- 40 Central Ave. (3999 sqft)
- 41-43 Harrison Ave. (3402 sqft)
- 47 Harrison Ave. (1938 sqft)
- 49 Harrison Ave. (2200 sqft)
- 45-47 Lakeside Ave. (3402 sqft)
- 51 Lakeside Ave. (3938 sqft)
- 53 Lakeside Ave. (3676 sqft)
- 89 Lakeside Ave. (3472 sqft)

I've just realized that I do not have Scott's email address, so please feel free to forward this to him, if you think he would find it helpful.

With thanks,
Gehn Fujii

(b) Dimensional Standards and Density

The density and intensity of development, dimensions of building lots, the heights of buildings and their setbacks from property boundary lines, and the limits on lot coverage shall be governed by the following standards:

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Table 4.4.5-1: Minimum Lot Size and Frontage: RL, RL-W, RM and RM-W²

	Lot Frontage ¹		Lot Size	
Use	(linear feet)		(square feet)	
	RL, WRL	RM, WRM	RL ³	RM
Single detached dwelling	Min: 60'	Min: 30'	Min: 6,000	NA
Duplex and above			Min: 10,000	
<div>1. The DRB may adjust the frontage requirements for lots fronting on cul-de-sacs, multiple streets, or corner lots reflecting the existing neighborhood pattern on each respective street.</div> <div>2. There are no minimum lot size or frontage requirements in the RH District.</div> <div>3. Exception: Larger minimum lot size in RL and WRL larger lot overlay district; refer to Section 4.5.5 & Table 5.5-1.</div>				

Table 4.4.5-2: Base Residential Density

District	Maximum dwelling units per acre ¹
Low Density: RL, RL-W	7 units/acre
Medium Density: RM, RM-W	20 units/acre
High Density: RH	40 units/acre
Inclusive of new streets but exclusive of existing streets, and without bonuses or any Inclusionary Zoning allowances.	

Table 4.4.5-3: Residential District Dimensional Standards

Zoning District	Max. Lot Coverage ¹	Setbacks ^{1, 3, 4}				Max. Height ¹
		Front ²	Side ³	Rear	Waterfront	
RL; WRL	35%	Min/Max: Ave. of 2 adjacent lots on both sides +/- 5-feet	Min: 10% of lot width, but in no event less than 5-feet Max required: 20-feet	Min: 25% of lot depth but in no event less than 20' Max required: 75-feet	Min: 75' feet from the ordinary high water mark of Lake Champlain and the Winooski River	35-feet

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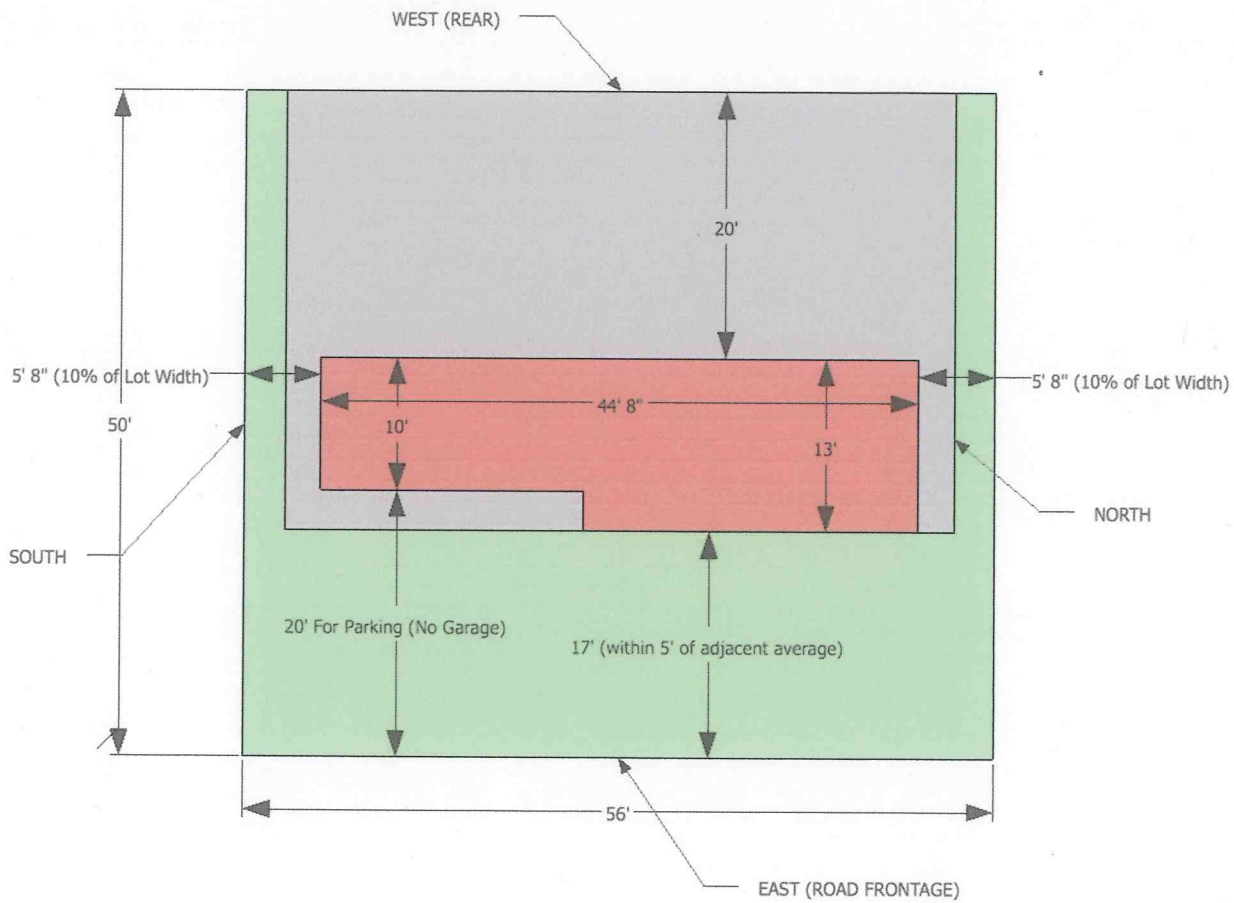
15 CONGER AVE

Green: Approximated Lot Dimensions (56' x 50' per deed)

Grey: Approximated Existing Structure Footprint (50' x 33")

Red: Allowable footprint under current ordinance

**Indicated setbacks per CDO Sec. 4.4.5, Table 4.4.5-3



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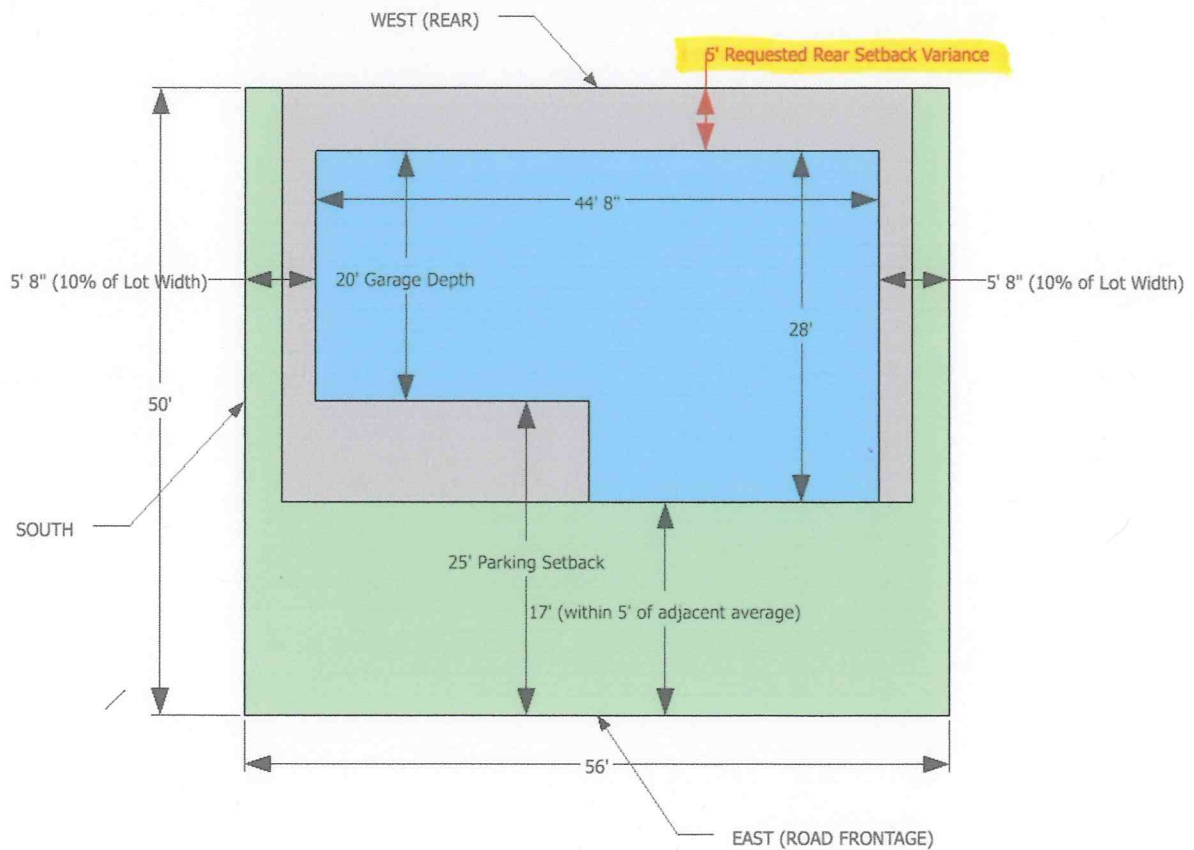
15 CONGER AVE

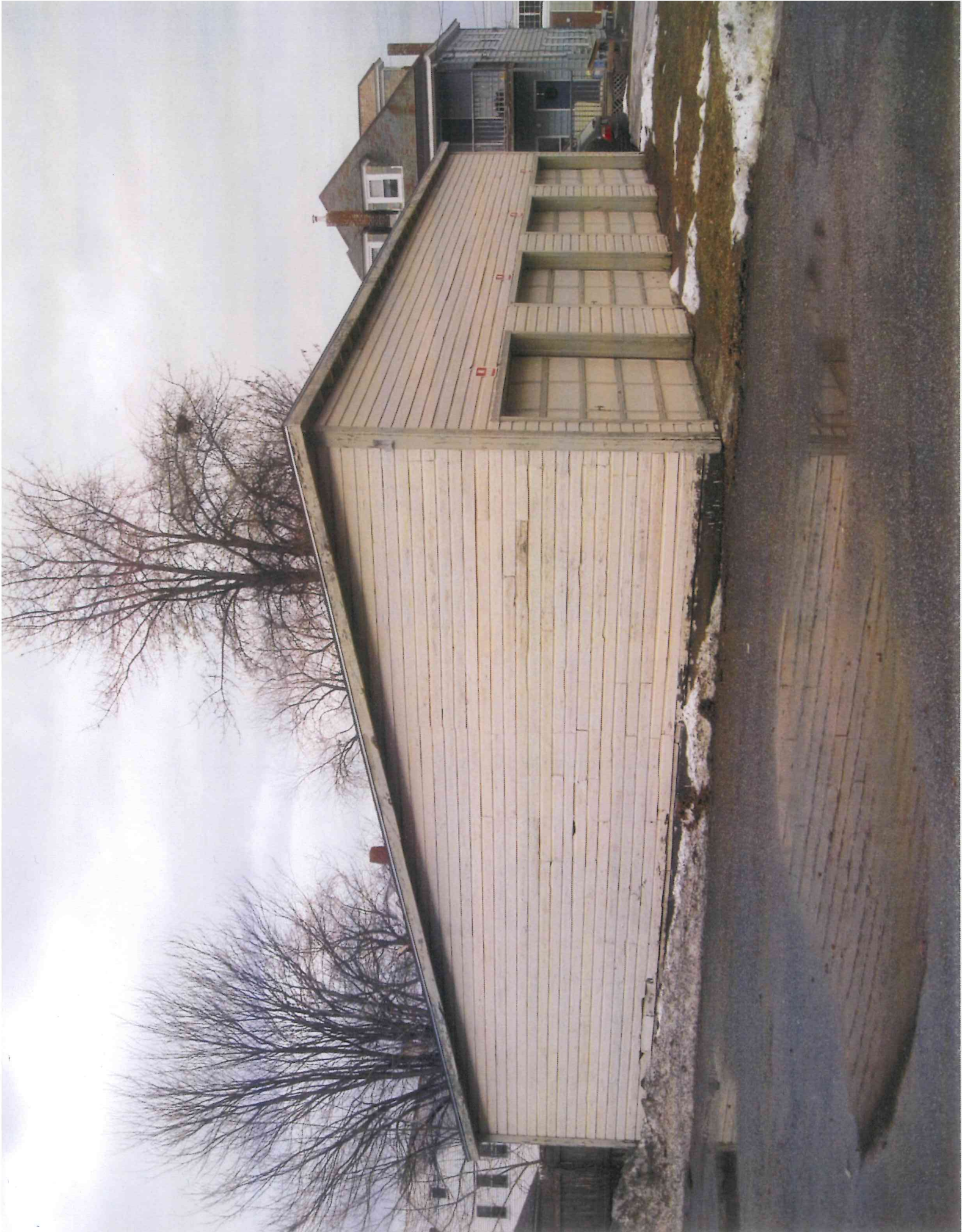
Green: Approximated Lot Dimensions (56' x 50' per deed)

Grey: Approximated Existing Structure Footprint (50' x 33')

Blue: Proposed Footprint

**Indicated setbacks per CDO Sec. 4.4.5, Table 4.4.5-3
except requested variance to rear setback in RED.





Map Overlay

- ☒ None
- ☐ 1978 B & W
- ☐ 1988 B & W
- ☐ 2000 B & W
- ☐ 2004 B & W
- ☐ 2004 Color
- ☐ 2009 Color

Search

Layers

- ☐ City Wards
- ☐ State Legislative Districts
- ☒ Tax Parcel Boundary
- ☐ Zoning Districts



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0 12.5 25 50 Feet

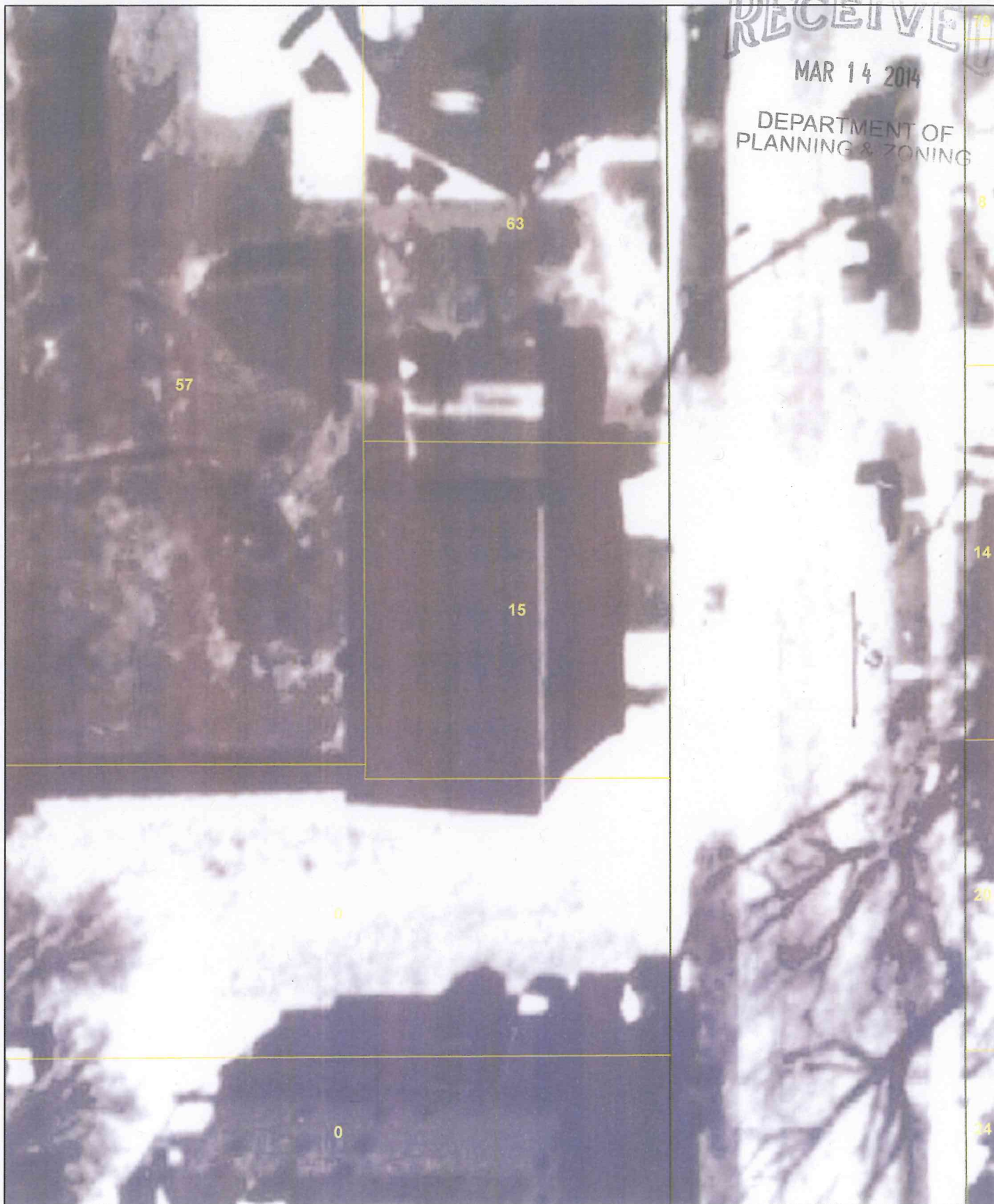
15 Conger Ave - 2004

Property lines are assumed only and are not considered accurate
Produced by N. Anderson at City of Burlington Planning and Zoning

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0 12.5 25 50 Feet

15 Conger Ave - 1978

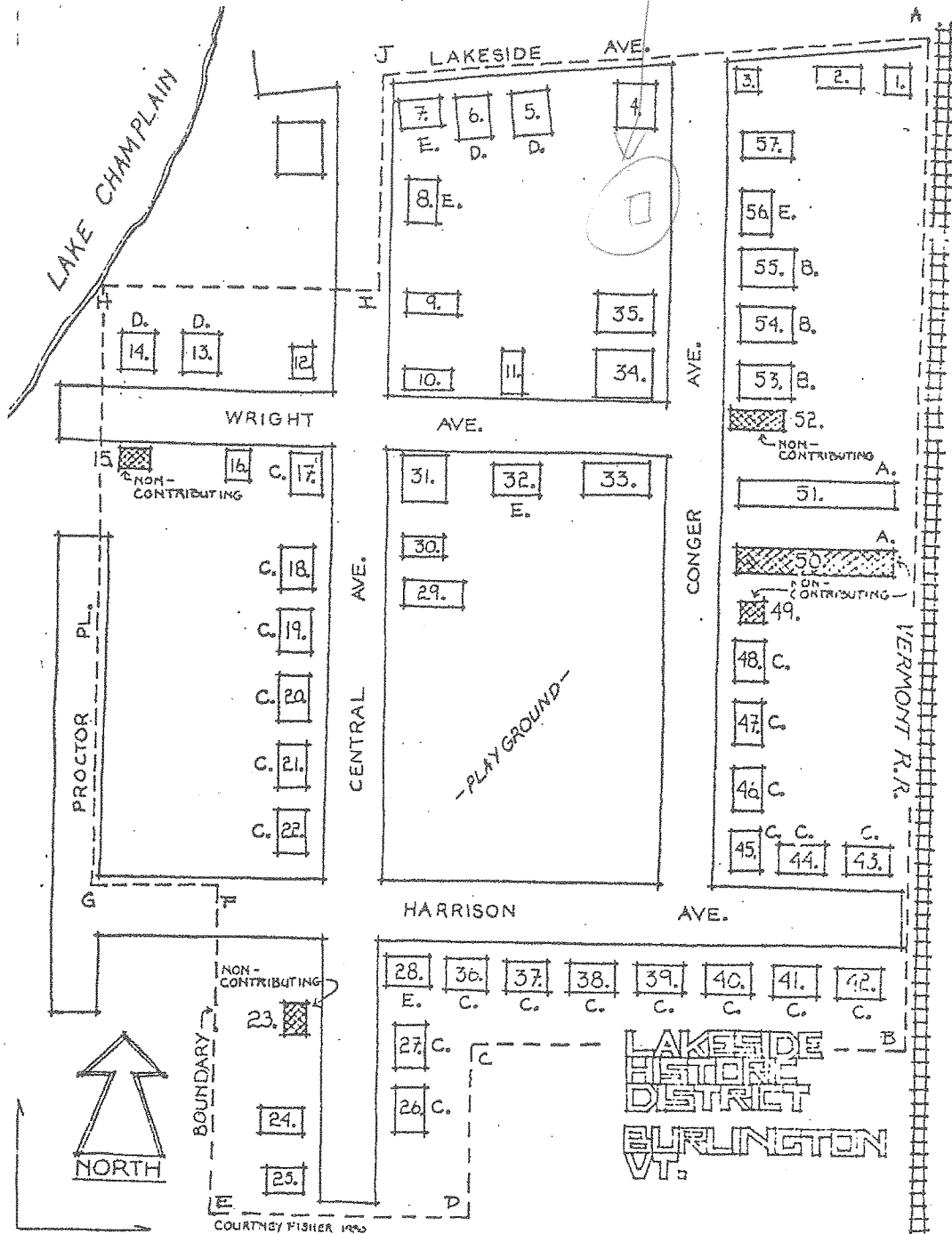
Property lines are assumed only and are not considered accurate
Produced by N. Anderson at City of Burlington Planning and Zoning

Location

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Know all Men by these Presents

That we, ARTHUR R. MARCHANT and JEANNETTE H. MARCHANT, husband and wife,

of Burlington in the County of Chittenden
and State of Vermont Grantors, in the consideration of
Ten and more ----- Dollars
paid to our full satisfaction by

LOUIS J. MAYNARD and JEANNETTE R. MAYNARD,
husband and wife,

of Burlington in the County of Chittenden
and State of Vermont Grantees, by these presents, do
freely Give, Grant, Sell, Convey and Confirm unto the said Grantees

LOUIS J. MAYNARD and JEANNETTE R. MAYNARD,
husband and wife, as an estate by the entirety,

and their heirs and assigns forever, a
certain piece of land in Burlington in the
County of Chittenden and State of Vermont, described as
follows, viz:

A lot of land with all buildings thereon situated on the westerly side of Conger Avenue, the structure on said lot consisting of four garages known as Nos. 15 and 19 Conger Avenue, meaning to convey all and the same land and premises acquired by us, said Arthur R. and Jeannette H. Marchant, in Warranty Deed of Mamie Adler dated September 25, 1964 and recorded in Vol. 167, Page 572, of the City of Burlington Land Records.

The land herein conveyed comprises the northerly three feet of Lot No. 6 in Block F, and the southerly portion of Lot No. 1 in Block F, on a plan of land of H. R. Conger recorded in Vol. 34, Pages 464-5, of the City of Burlington Land Records, making a total frontage of 56 feet, more or less, and a depth of 50 feet, more or less.

Reference is made to said deed, plan and their records and to the deeds therein mentioned in aid of this description.

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To have and to hold said granted premises, with all the privileges and appurtenances thereof, to the said Grantees,

LOUIS J. MAYNARD and JEANNETTE R. MAYNARD,
husband and wife, as an estate by the entirety,
their heirs and assigns, to their own use and behoof forever;
And we, the said Grantors,

ARTHUR R. MARCHANT and JEANNETTE H. MARCHANT,
for ourselves and our heirs,
executors and administrators, do covenant with the said Grantees,

LOUIS J. MAYNARD and JEANNETTE R. MAYNARD, their
heirs and assigns, that, until the enrolling of these presents we are
the sole owners of the premises, and have good right and title to convey the
same in manner aforesaid, that they are **Free from every encumbrance;**
except taxes and assessments on said premises hereafter due and pay-
able, which taxes and assessments the within grantees assume and agree
to pay, and we

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hereby engage to ~~Warrant and~~ **Defend** the same against all lawful claims
whatever, except as above stated.

In Witness Whereof, we hereunto set our hands and seals
this 29th day of September, A. D. 1972.

In Presence of

Royal M. Gibbo, Jr.
Royal M. Gibbo, Jr.

Arthur R. Marchant
Arthur R. Marchant

Monica A. Dupont
Monica A. Dupont

Jeannette H. Marchant
Jeannette H. Marchant

Vermont Property Transfer Tax
22 V.S.A. Chap. 231

—ACKNOWLEDGMENT—
Notary Public—See this—Board of Health Cert. Rec'd.
Vt. Land Use & Development Plans Act Cert. Rec'd.

Notary No. 8111663
Signed R. M. Gibbo, Jr. Clerk
Date 9-29-72

State of Vermont,

CHITTENDEN

County

ss. At

Burlington

this

29th day of September, A. D. 1972

ARTHUR R. MARCHANT and JEANNETTE H. MARCHANT

personally appeared, and they acknowledged this instrument, by
them sealed and subscribed, to be their free act and deed
Before me Royal M. Gibbo, Jr.
Notary Public

Received for record Sept 29, 1972, at 3:00 P. M. and recorded.

Attest:

B. H. Hendry
City Clerk

Scott Gustin

From: Ken Lerner
Sent: Wednesday, April 02, 2014 2:26 PM
To: 'Marc Landry'
Cc: Scott Gustin
Subject: RE: 15-19 Conger Ave

Hi Marc;

The application for a variance is scheduled for a hearing on May 6th at the DRB. Notices for public hearings are sent 15 days prior to the meeting, so you are ahead of the curve on this. The file is available for review at the P&Z Office in City Hall on weekdays from 8 am to 4:30 PM.

Scot Gustin is the staff project manager who will be preparing staff comments for the DRB hearing. Variances are based on unique circumstances of a particular lot that preclude it being developed and there are several criteria that must be found in order to grant a variance. These are in the zoning regulations:

http://www.burlingtonvt.gov/sites/default/files/PZ/CDO/CDO20120910_13_article_12.pdf.

Hope this helps,
Ken

*** Please note that any response or reply to this electronic message may be subject to disclosure as a public record under the Vermont Public Records Act*

From: Marc Landry [<mailto:landryinsurance@comcast.net>]
Sent: Wednesday, April 02, 2014 10:54 AM
To: Ken Lerner
Subject: 15-19 Conger Ave

Ken

I hope that you are the correct party to contact regarding an application for variance that is underway for this property. I called your office and got voicemail. Received a letter today from Mr. Fujii.

Questions:

As owner of an adjoining property why were my wife and I not given notice of this application? (57-59 Lakeside Avenue).

When is the hearing scheduled?

Are there any changes that are being requested that could have an effect on our ability to develop our own property in the future? In otherwords were a 5' rear setback granted, were we at some point

in time to want to locate a structure in a similar fashion, would the 10' proximity result in more stringent review of our application and be deemed to be too close? Might it result in height restrictions being imposed on us?

Can the applicant stipulate that they will not contest any future permit requests relative to our property based on the variances that they seek for themselves? Lot cover/density/setback?

All of Lakeside, with the possible exception of Joan Shannon's home, is probably non-conforming.

Anyone who seeks to expand usage on their property will need a variance. In our case we are probably the only parcel with what works out to a vacant lot. If we are able to arrive at a